in itself such as to constitute a public nuisance. The evidence as to that method is quoted supra. It is claimed on behalf of appellant that his method was quite as sanitary and free from objection as that adopted by the city. We think, however, that even if this be true, it is no answer to the charge that appellant was creating a nuisance. All authorities agree in holding that garbage in and of itself is a nuisance, and all agree that, in the exercise of the police power, a municipality may control the manner of its collection and disposition. It is obviously for the interests of the whole public that such offensive offal should be collected by persons under the immediate control of the municipal authorities, and this control the ordinance in question seeks to preserve.

The record discloses the fact that, besides defendant and appellant, several others in the city of Grand Rapids were engaged in an enterprise similar to his own. The difficulty of maintaining a constant surveillance over unlicensed and irresponsible collectors must be obvious to all. It is perhaps, however, not necessary to base determination upon this phase of the case. The bill avers and the evidence shows that the city had a direct financial interest in the garbage in question. Its right to compel delivery thereof to its own collectors and to receive pay therefor from the Garbage Holding Co. can not be questioned. The activity of the appellant and others in collecting the garbage prevented the city from receiving the agreed price for so much thereof as appellant and the other unlicensed collectors secured. It is easy to believe that the continued collection of garbage by appellant and others might so reduce the amount collected by the city and delivered to the Garbage Holding Co. under its contract as to render it impossible for the contract to receive practical performance. Nor can it be said that a prosecution under the penal clause of the ordinance would afford the city an adequate remedy. The offending party is entitled to appeal after conviction from court to court and thus cause delay. In the meantime the city is subjected to the loss of the material which, though not property in an ordinary sense, has under the contract between the city and the Garbage Holding Co. a certain fixed value determined by that contract.

For both reasons stated, we are of opinion that the decree of the court below perpetually enjoining defendant from collecting garbage within the city of Grand Rapids should be, and it is, affirmed.

NEW YORK SUPREME COURT, APPELLATE TERM, FIRST DEPARTMENT.

Milk—Adulterated—New York Act Construed.

PEOPLE *v.* MARTIN, 151 N. Y. Supp., 69. (Jan. 7, 1915.)

The New York act defining "adulterated milk" refers to all milk sold, and not merely to milk to be used in the making of butter, cheese, and other articles enumerated in the law.

GUY, J.: Plaintiff sued the defendant to recover a penalty of $50 alleged to have been incurred under section 52 of the agricultural law for exposing for sale adulterated milk, as defined by subdivisions 1 and 2 of section 30 of said law. The respondent's counsel urges, and this seems to have been the view taken by the learned trial justice in the court below, that section 30, subdivisions 1 and 2, of the agricultural law, prescribe no standard for the selling or exposing for sale of adulterated milk, and that the use of such milk is only forbidden, and the standard prescribed, when such milk is used in the manufacture of butter, cheese, and the other articles enumerated in such section.

This construction of the section referred to can not be upheld. Section 30 of the agricultural law reads as follows:

SEC. 30. *Definitions.*—The terms "butter" and "cheese" when used in this article mean the products of the dairy usually known by those terms which are manufactured exclusively from pure, unadulterated milk or cream, or both, with or without salt or rennet, and with or without coloring matter or sage. The terms "oleomargarine," "butterine," "imitation butter," or "imitation cheese" shall be construed to mean any article or substance in the semblance of butter or cheese not the usual product of the dairy and not made exclusively of pure and unadulterated milk or cream or any such article or substance into which any oil, lard, or fat not produced from milk or cream enters as a component part, or into which melted butter or butter in any condition or state, or any oil thereof, has been introduced to take the place of cream. The term "adulterated milk" when so used means:

1. Milk containing more than 88 per cent of water or fluids.
2. Milk containing less than 12 per cent of milk solids.
3. Milk containing less than 3 per cent of fats.
4. Milk drawn from cows within 15 days before and 5 days after parturition.
5. Milk drawn from animals fed on distillery waste or any substance in a state of fermentation or putrefaction or on any unhealthy food.
6. Milk drawn from cows kept in a crowded or unhealthy condition.
7. Milk from which any part of the cream has been removed.
8. Milk which has been diluted with water or any other fluid or to which has been added or into which has been introduced any foreign substance whatever.

All adulterated milk shall be deemed unclean, unhealthy, impure, and unwholesome. The terms "pure milk" or "unadulterated milk," when used singly or together, mean sweet milk not adulterated; and the terms "pure cream" or "unadulterated cream," when used singly or together, mean cream taken from pure and unadulterated milk. The term "adulterated cream" when used shall mean cream containing less than 18 per cent of milk fat or cream to which any substance whatsoever has been added.

It is perfectly apparent from the reading of the section that the standard for pure milk is fixed by its requirements, and that milk that contains more than 88 per cent of water or fluids or milk not conforming to the several specifications contained in section 30 is "adulterated" milk within the purview of the statute without regard to its specific use, and that by the sale or exposing for sale of such milk the vendor is liable for the penalty of $50 prescribed by section 52 of the act. The construction sought to be placed upon this section by the defendant would permit the sale of milk regardless of its adulterations and without conforming to the requirements of the section.

The other points raised by the appellant are equally untenable. No evidence was offered by the defendant, and the complaint was dismissed at the close of the plaintiff's case. It was shown that samples of milk were taken from a wagon from which one of the men in charge delivered milk to a house in Prince Street, New York City. The analysis of the milk, made by a competent chemist and by the best-known method for determining the amount of solids or fats, show that the milk contained 89.69 per cent of water, the solids being 10.31 per cent, thus failing within the definition of adulterated milk as prescribed in the statute.

Judgment reversed and new trial ordered, with costs to the appellant to abide the event. All concur.